IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1706 of 2005

Shri Haider Abbas Niyaz Husain
Sayyad @ Haider Nasir .... Petitioner

V/s

1. The Commissioner of Police,
Greater Mumbai
2. The State of Maharashtra
3. The Superintendent,
Nasik Central Prison, Nasik .. Respondents

Mr. Jayant Gohil for Petitioner
Smt. A.S.Pai, A.P.P. for Respondent-State

CORAM:S.B.MHASE & S.R.SATHE,JJ.
DATED: 20th October 2005

ORAL JUDGMENT :- (Per S.R.SATHE,J.)

1. By this petition under Article 226 of Constitution of India, the Petitioner is challenging the order of detention passed against him by Respondent no.1, the Commissioner of Police, Greater Mumbai, on 25-10-2004 in exercise of powers conferred by Section 3(i) of the

Maharashtra Prevention of Dangerous Activities of Slum Lords,Bootleggers, Drugs Offenders and Dangerous Persons Act, 1981. (For the sake of convenience hereafter referred to as the MPDA Act).

2. The detention order in question is based on 2 C.R. numbers viz. i) 79/20044 under Section 326, 34 of IPC registered at D.N.Nagar Police Station pertaining to incident dated 11-2-2004, ii) C.R.No.165/2004 under Section 324 34 of IPC registered at D.N.Nagar Police Station pertaining to incident dated 11-4-2004 and In Camera statements of two witnesses "A" and "B" recorded on 29-8-2004 and 31-8-2004 respectively, for the incidents which had taken place in the first week of July 2004 and last week of June 2004 respectively.

3. The Petitioner was evading his arrest. However, finally he was arrested on 15-2-2004 in C.R.No.79/2004. However, in the said C.Rs bail was granted and the Petitioner availed the facility on 18-3-2004. In C.R.no.165/2004, he was arrested on 11-4-2004 and he availed bail on 12-4-2004. From the statements of witnesses recorded in CRs as well as from the statement of witnesses "A" and "B" the Sponsoring authority found that the Petitioner and his associates were weapon wielding dangerous desperados, they had created a region of terror and fear in the minds of the people in that locality and as a result of the same nobody was willing to come forward

and complain about the Petitioner and his associates. The Sponsoring authority therefore made a proposal for detention to the Respondent no.1. Respondent no.1, on the basis of the material collected against the Petitioner was subjectively satisfied that the activities of the Petitioner were prejudicial to the maintenance of the public order. In order to prevent the said prejudicial activities the Respondent no.1 passed order of detention against the Petitioner on 25-10-2004.

4. The above mentioned detention order is challenged by the Petitioner in this petition on several grounds. However, at the time of hearing Shri Gohil, learned Advocate for the Petitioner has pressed into service only one ground i.e. ground mentioned in clause (w) at page 20 of the petition. The said ground runs as follows :-

> w) The Petitioner states and submits that the grounds of detention are stale and have no live link with the order of detention dated 25-10-2004. The alleged incidents referred by Witnesses A and B are of July, 2004. In camera statements of these witnesses were recorded on 29 and 31 of August 2004 and criminal case referred by the Respondent no.1 in the grounds of detentions are of February, April and July relates to incidents and the statements of all the witnesses in the said C.R.No.79/2004 were recorded by Respondent. The Petitioner states that there is a gross delay in

issuing the said order of detention. The long and unexplained delay has snapped the live link between the alleged prejudicial activities of the Petitioner and the need to detain the Petitioner under the prevention law by orders of detention.

5. Shri Gohil, learned Advocate for the Petitioner argued before us that in camera statements were recorded by Police merely to fill in the gap between the first incident dated 10-2-2004 and the date of proposal i.e. 2-9-2004. Besides that there was considerable delay in passing the detention order after the proposal was received on 2-9-2004. According to the learned Advocate for the Petitioner, the long and unexplained delay has snapped the live link between the alleged prejudicial activities of the Petitioner and need to detain him under the Prevention law. In order to substantiate his proposition he has placed reliance on a case -Austin William Luis Pinto V/s Commissioner of police, Greater Mumbai and Ors. **2005 ALL MR (Cri) 28** wherein the Division Bench of this Court observed that the detention order in the said case is vitiated on account of delay in issuing the order of detention. In that case the first incident had occurred on 1-5-2003 and on the basis of the same C.R. was registered and after arrest detenue was released on bail on 5-7-2003. Confidential enquiry was held and statements were recorded on 12-7-2003 and 14-7-2003 and

proposal was submitted on 26-7-2003. The detaining authority passed the detention order on 30-9-2003. The Court held that delay is fatal. In the case in hand the first incident is dated 10-2-2004, the second incident is dated 10-4-2004. However, the statements of witnesses A and B were recorded on 29-8-2004 and 31-8-2004 respectively in respect of the incidents taken place in July 2004 and June 2004 respectively and the proposal was made on 2-9-2004 while the detention order is issued on 25-10-2004. Thus there is delay in passing the detention order. However, merely because there is delay, one cannot jump to the conclusion that the said delay is fatal or it vitiates the order of detention. Ultimately, one has to see all the facts and circumstances and find out as to what are the reasons for delay and whether the said delay is properly explained or whether it has gone unexplained and resulted in affecting the valuable rights of the detenue.

6. From the perusal of the judgment cited above, it appears that in that case the Court was of the view that incident mentioned in C.R. cannot affect the public order. There was no material on record to indicate that on account of incident in question a region of terror was crated in the vicinity and even tempo of life of the society was disturbed. While in the case in hand, such is not the position. The statements of witensses A and B clearly indicate that Petitioner and his associates had

created terror in the locality and as a result of the same even tempo of life of the society was disturbed. In fact the learned Advocate for the Petitioner has not at all challenged the order of detention on this ground.

7. In this case the statements of witnesses A and B have been recorded only after the time the Petitioner availed bail on 18-3-2004 and 12-4-2004. However, admittedly the application for cancellation of bail was submitted by the Police and the same was pending. During the confidential enquiry dated 29-8-2004 and 31-8-2004, it transpired that the Petitioner was indulging in activities prejudicial to the maintenance of the public order. So, the proposal was submitted on 2-9-2004. There is no delay in submitting the proposal from the date of in camera statements. The delay is between the date of proposal and date of detention order. However, the said delay is explained in detail by Respondent no.1 - Commissioner of police in his affidavit and in particular in para 29. It is pertinent to note that he has practically given the entire account of the steps taken by the Sponsoring authority and his office from the date of arrest of the Petitioner till passing of the detention order. At page 100 of the petition he has given in detail the steps taken after the proposal was made on 2-9-2004. It is clear from the affidavit of Respondent no.1 that after the time he approved the proposal on 17-9-2004 and formulated the draft grounds, papers were forwarded to PCBCID for fair

typing of the grounds of detention, order of detention and translation of the documents in the language known to the detenue. The papers which were to be translated, were running into 164 pages, as detenue was not knowing English and Marathi. The Sponsoring authority was therefore required to give the said work of translation to the private translator and on receipt of translated papers again the Senior PIPCB CID was required to go through the said translation. The Respondent no.1, received the papers and translated documents, who in turn, again carefully examined the same and then passed the detention order on 25-10-2004. He has also specifically stated that during the period from 18-9-2004 to 25-10-2004 there were 12 holidays and Ganesh Chaturthi and as a result of the same the time was consumed. So, under such circumstances we do find that in this case, the Detaining authority has satisfactorily explained the alleged delay. As against this, in the case cited above, the Court had come to the conclusion that delay in the said case was not at all explained. So, the above cited ruling is of no help to the present Petitioner. We also cannot ignore the fact that in the case cited above, there was not only delay in passing the detention order but the Court had also observed that activities referred in C.Rs were not prejudicial to the maintenance of public order. So, the Court observed that cumulative effect of the same was that detention order vitiated on account of delay in issuing the detention order.

8. As in the present case, delay is satisfactorily explained and the said explanation is accepted by us, we have no hesitation to hold that the alleged delay has not snapped the live link between the alleged prejudicial activities of the Petitioner and the detention order. So, we have no hesitation to hold that the detention order in question cannot be set aside on the ground of delay.

9. In this view of the matter there is no substance in this petition. The Criminal writ petition is dismissed and the rule discharged.

(S.R.SATHE,J.) (S.B.MHASE,J.)